UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,049	07/22/2003	David Lawrence	17209-336CP1	1093

54205   7590   11/19/2009
CHADBOURNE & PARKE LLP
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER
SEREBOFF, NEAL

ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
11/19/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/625,049	LAWRENCE, DAVID
	Examiner	Art Unit	
	NEAL R. SEREBOFF	3626	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>28 July 2009</u>.

2a) ☒ This action is FINAL.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-16 and 18-34</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-16 and 18-34</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   In the amendment dated 7/28/2009, the following has occurred: Claims 3, 14, 27, 33 and

34 have been amended; Claim 17 has been canceled.

2.   Claims 1 – 16 and 18 – 34 are pending.

Notice to Applicant

3.   The text of those sections of Title 35, U.S. Code not included in this action can be found

in a prior Office action.

4.   The Applicant has argued the limitation, "Structuring the gathered data and the data

relating details of the long term care transaction according to risk quotient criteria." The

Examiner includes sections from the Applicant's specification here as a basis for the rejection

and response to arguments below. (*emphasis added*)

Page 8, lines 3 – 11

        Referring now to Fig. 1 a block diagram of some embodiments of the present invention is
illustrated. An RMC system 106 gathers and receives information which may be related to Risk
variables associated with a LTC. Information may be received, for example, from publicly
available sources 101-105, subscribers 111, investigation entities, or other sources 107. The
information can be constantly updated and can be related to LTC, a LTC facility, a LTC
provider, such as a parent corporation, or other LTC related subject or LTC related alert list in
order to facilitate due diligence or other research efforts. ***The RMC system 106 facilitates due
diligence on the part of a subscriber 111 by gathering, structuring and providing to the
subscriber 111 data that relates to Risk variables involved in a designated LTC subject.***

Page 10, lines 5 – 18

        Information gathered from the diversity of data sources can be aggregated into a 25
searchable data storage structure 108. Some embodiments can include receiving and storing a
source of information. In some instances a subscriber 111 may wish to receive information
regarding the source of information received, such as, for example, if a subscriber wishes to
pursue obtaining additional related information; ascertain the veracity of the information; check
to see how current the information is; determine credibility of the source or other reason.

Gathering data 108 into an aggregate data structure 108, such as a data warehouse can allow a RMC system 106 to have the data 108 readily available for processing a Risk management search associated with a Risk subject. Aggregated data 108 can also be scrubbed or otherwise enhanced.

In some embodiments including enhanced data, data scrubbing can be utilized to implement a data warehouse comprising the aggregate data structure 108. Data scrubbing can access information from multiple databases and store it in a manner that gives more efficient more flexible access to key facts. Scrubbing can facilitate expedient access to accurate data commensurate with a critical decision that may be based upon a Risk management assessment provided.

Page 19, lines 1 – 4

The PRM server 211 includes one or more databases 225 storing data relating to proprietary Risk management. The RMC server 210 and the PRM server 211 may interact with and/ or gather data from an operator of a system access device 220-224 226 228 or other source. *Data received may be structured according to Risk criteria and utilized to calculate a Risk quotient.*

Page 20, lines 11 and 12

The RMC server 210 can aggregate the data received according to LTC Risk variables 312 or according to any other data structure conducive to fielding LTC related Risk.

Page 20, line 18 through page 21, line 4

All data received can be combined and aggregated 312 to create an aggregate source of data which can be accessed to perform Risk management activities. Combining data can be accomplished by any known data manipulation method. For example, the data can be maintained in separate tables and linked with relational linkages, or the data can be gathered into on comprehensive table or other data structure. In addition, if desired, information received can be associated with one or more variables including a number of violations received during inspections and the type of violation; a quantity of complaints filed and the reason for such complaints; any fines levied against a LTC facility and/ or provider; employment history of a key employee of a LTC provider; a record of conviction for any employee of an LTC provider; types of services offered by a LTC provider; cost of care at an LTC facility; financial statements relating to a LTC facility or LTC provider; any records relating to bankruptcy associated with an LTC provider, or other data.

Page 24, lines 6 – 11

Referring now to Fig. 6, a portion of a data structure that can be utilized with some embodiments of the present invention is illustrated. The data structure 600 can include, for example, a data field for storing risk variables 602, a data field for storing a LTC provider 604,

a data filed for storing a description of a publication or other document description 606, a data field for storing a description of an identification of a source of information 608, or other data fields. Data structures 600 can include relational data, hierarchical data, flat files or other formats known in the arts.

Claim Rejections - 35 USC § 101

5.   Claims 1 – 16 and 18 – 32 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter.

Claims 1 – 16 and 18 – 32are rejected under 35 U.S.C. 101 based on Supreme Court precedent,

and recent Federal Circuit decisions, a § 101 process must (1) be tied to a machine (such as a

particular apparatus) or (2) transform underlying subject matter (such as an article or materials)

to a different state or thing. In re Bilski, F.3d , 88 U.S.P.Q.2d 1385 (2008). Diamond v. Diehr, 450

U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409

U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876). The process steps in claims

(1 – 16 and 18 – 32) are not tied to a machine nor do they execute a transformation. Thus, they

are non-statutory.

The use of a computer in claim 1 is considered insignificant extra-solution activity. The activity

relating to finding the solution is not performed by the computer. In particular:

- Calculating a risk quotient by referencing the structured data; and

Claim Rejections - 35 USC § 102

6.   ***Claim 1 – 16, 18 – 27, 30 and 32 – 34*** are rejected under 35 U.S.C. 102(e) as being

anticipated by Fogel et al., U.S. Patent Number 6,542,905.

7.   As per claim 1, Fogel teaches a computer-implemented method for managing risk related

to a long term care, the method comprising:

- Indicating in a computer system that an entity is a long term care entity according to the entity's status as at least one of: a long term care provider or a long term care facility operator (figure 1, nursing facility);

- Gathering data into the computer system generally related to one or more long term care entities (figure 1, #28 or #36);

- Receiving data into the computer system descriptive of details of a long term care transaction wherein the data received comprises identification data for at least one long term care entity (column 17, lines 14 – 19, admission information);

- Structuring the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure and column 21, lines 11 - 36);

- Calculating a risk quotient by referencing the structured data (column 4, lines 18 – 31 and column 24, lines 54 – 65) ; and

- Generating a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 and column 24, lines 54 – 65 where a report is generated).

8.   As per claim 2, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the long term care transaction comprises a financial investment in at least one of: a long term care facility and a long term care provider (column 16, lines 33 – 50, payment by insurance company).

9.   As per claim 3, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the long term care transaction comprises an admittance to a long term care facility (column 9, lines 7 – 26).

10.   As per claim 4, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of a cost to defend an adverse position (column 14, lines 5 – 39 where "cost to defend" is not defined with Pre-Grant Publication paragraph 24 and therefore is considered to be the financial impact of the current program. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

11.   As per claim 5, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication an amount of reputational risk ("reputational risk" as explained with Pre-Grant Publication paragraph 24 is considered to be the "harm that a Risk Bearing Institution or Transaction Participant may suffer regarding its professional standing in an industry or the public eye." Column 14, lines 5 – 39 where the amount of harm is considered to be the financial impact of the current program. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

12.   As per claim 6, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the risk quotient comprises an indication of an amount of regulatory risk ("regulatory risk" is not defined nor quantified by the instant application. Column 4, lines 1 - 17 where the score is useful within regulation. The value of the risk quotient is considered non-functional descriptive information and therefore has no patentable weight).

13.   As per claim 7, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the risk quotient comprises an indication of an amount of legal risk

("legal risk" is not defined nor quantified by the instant application. Column 2, lines 27 – 50

where the score is useful for determining legal liability. The value of the risk quotient is

considered non-functional descriptive information and therefore has no patentable weight).

14.   As per claim 8, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the risk quotient comprises an indication of an amount of risk

associated with monetary costs related to potential fines ("risk associated with monetary costs

related to potential fines" is not defined nor quantified by the instant application. Column 20,

lines 40 – 67 where the monetary costs relate to lack of payments and so the fine is the failure to

reimburse the institution. The value of the risk quotient is considered non-functional descriptive

information and therefore has no patentable weight).

15.   As per claim 9, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the gathered data comprises data descriptive of one or more world

events which is received via a news feed (The stored news data represents non-functional

descriptive information. Abstract where data is stored)

16.   As per claim 10, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the gathered data comprises at least one government advisory

(Figure 1, #36 and the gathered data represents non-functional descriptive information).

17.   As per claim 11, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein calculating the risk quotient criteria comprises a value determined

by the steps of:

- Associating a numerical weight with each of a plurality of risk variables (figure 1, # 26 and # 34);

- Associating one or more of the risk variables with the data descriptive of details of a long term care transaction (figure 1, #28 and #36);

- Determining a numerical value based upon the content of the data descriptive of details of a long term care transaction associated with the one or more risk variables (figure 1, #26); and

- Multiplying the numerical value based upon the content times the numerical weight associated with each of the risk variables associated with the data descriptive of details of a long term care transaction (figure 1, #24, grade).

18.   As per claim 12, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the steps of presenting the report as evidence of due diligence to at least one of: a regulatory body, a shareholder and a news media (column 21, lines 41 – 46).

19.   As per claim 13, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method additionally comprising the step of generating a suggested action based upon the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 26, lines 48 – 67 where the report suggests fixes).

20.   As per claim 14, Fogel teaches the method of claim 1 as described above. Fogel further teaches the method wherein the data gathered comprises data relating to a personnel employed by a long term care provider (column 21, lines 11 – 36).

21.   As per claim 15, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the data gathered comprises data relating to patient welfare (column

4, lines 1 – 17).

22.   As per claim 16, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method additionally comprising the steps of:

- Associating one or more statutes or regulations with the long term care transaction

     (column 16, lines 51 through column 17, line 3, Medicare regulations); and

- Transmitting a description of the associated statute with the data (This step is not

     performed as the preceding step was for a regulation. Therefore, this step has no

     patentable weight. Additionally, if the current step were limiting, although not, the

     statute description would be considered non-functional descriptive information).

23.   As per claim 18, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the report comprises a record of conviction of an employee or owner

of a long term care facility (column 4, lines 18 – 32 where a report is provided and the

information within the report is considered non-functional descriptive information and therefore

has no patentable weight).

24.   As per claim 19, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the report comprises data descriptive of fines levied against a long

term care facility or complaints filed against the facility (column 4, lines 18 – 32 where a report

is provided and the information within the report is considered non-functional descriptive

information and therefore has no patentable weight).

25.   As per claim 20, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the report comprises one or more sources of the gathered data

(column 4, lines 18 – 32).

26.   As per claim 21, Fogel teaches the method of claim 20 as described above. Fogel further

teaches the method wherein the source comprises an investigation firm (column 4, lines 18 – 32

where a report is provided and the information within the report is considered non-functional

descriptive information and therefore has no patentable weight. The source of data is non-

functional when changing the data source does not effect the result).

27.   As per claim 22, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method additionally comprising the step of transmitting an image of a document

comprising data associated with the long term care transaction (column 2, lines 40 – 50 where

documents may be scanned).

28.   As per claim 23, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein report does not comprise any content created or developed by a

provider of the system implementing the method for managing risk associated with long term

care (column 4, lines 18 – 32 where a report is provided and the information within the report is

considered non-functional descriptive information and therefore has no patentable weight).

29.   As per claim 24, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method additionally comprises the steps of:

- Receiving a request for an alert (The Examiner is using the examples provided in

  paragraph 54 to understand the meaning of "alert." As such, the Examiner understands

      that an alert is an automated response based upon a trigger. Column 27, lines 46 – 54,

      trigger text box);

- Monitoring the gathered data (column 27, lines 7 – 16); and

- Transmitting a notification of new information received associated with the long term

   care risk subject (column 27, lines 7 – 54).

30.   As per claim 25, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the data is gathered into a risk management clearinghouse ("Risk

management clearinghouse" is understood, by figure 1 to be a database. The name of the

database is considered to be non-functional descriptive information. Abstract).

31.   As per claim 26, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein the data descriptive of details of a long term care transaction is

received by a proprietary risk management system (The Examiner is using the Collins definition

of proprietary to understand that this is a system owned by an individual or company. Abstract).

32.   As per claim 27, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein at least one of: the gathered data and the data descriptive of details

of a long term care transaction; comprise data provided by a long term care recipient (column 3,

lines 31 – 40 and column 27, lines 31 – 45, resident assessment data).

33.   As per claim 30, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method additionally comprising the step of augmenting at least one of: the gathered

data and the data descriptive of details of a long term care transaction; via data mining (column

6, lines 50 – 58 where researchers access the data).

34.   As per claim 32, Fogel teaches the method of claim 1 as described above. Fogel further

teaches the method wherein structuring the gathered data and the data relating details of the long

term care transaction according to risk quotient criteria comprises relevance ranking (column 6,

lines 39 – 49 where a scale is a rank and column 11, line 66 through column 12, line 3).

35.   As per claim 33, Fogel teaches a computerized system for managing risk associated with

long term care, the system comprising:

- A computer server accessible with a system access device via a communications network

   (column 1, lines 8 – 17 and column 3, line 51 through column 4, line 17); and

- processor executable instructions stored on the server and executable on demand (column

   3, lines 62 – 67), the processor executable instructions operative with the server to cause

   the system to:

   - o Indicate in a computer system that an entity is a long term care entity according to

      the entity's status as at least one of: a long term care provider or a long term care

      facility operator (figure 1, nursing facility);

   - o Gather data into the computer system generally related to one or more long term

      care entities (figure 1, #28 or #36);

   - o Receive data into the computer system descriptive of details of a long term care

      transaction (column 17, lines 14 – 19)

      - ▪ Wherein the data received comprises identification data for at least one

         long term care entity (column 17, lines 14 – 19, admission information);

- ▪ Structure the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure and column 21, lines 11 - 36);
  - ○ Calculate a risk quotient by referencing the structured data (column 4, lines 18 – 31 and column 24, lines 54 – 65) ; and
  - ○ Generate a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 and column 24, lines 54 – 65 where a report is generated).

36. As per claim 34, Fogel teaches a computer executable program code residing on a computer-readable medium, the program code comprising instructions for causing the computer to:

- Indicate in a computer system that an entity is a long term care entity according to the entity's status as at least one of: a long term care provider or a long term care facility operator (figure 1, nursing facility);

- Gather data into the computer system generally related to one or more long term care entities (figure 1, #28 or #36);

- Receive data into the computer system descriptive of details of a long term care transaction (column 17, lines 14 – 19)
  - ○ Wherein the data received comprises identification data for at least one long term care entity (column 17, lines 14 – 19, admission information);

      o Structure the gathered data and the data relating details of the long term care transaction according to risk quotient criteria (column 5, lines 31 – 39 where the database provides structure and column 21, lines 11 - 36);

- Calculate a risk quotient by referencing the structured data (column 4, lines 18 – 31 and column 24, lines 54 – 65) ; and

- Generate a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient (column 4, lines 18 – 31 and column 24, lines 54 – 65 where a report is generated).

Claim Rejections - 35 USC § 103

37.   ***Claims 28 and 29*** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al., U.S. Patent Number 6,542,905 in view of Thompson et al., U.S. Pre-Grant Publication 2002/ 0103834.

38.   As per claim 28, Fogel teaches the method of claim 1 as described above.

Fogel does not explicitly teach the method additionally comprising the step <u>of enhancing the gathered data.</u>

However, Thompson further teaches the method additionally comprising the step of enhancing the gathered data (figure 3, spell check and correcting and paragraphs 471 – 480).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

- With the motivation to provide a computer-aided error correction application (Thompson,paragraph 14).

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.

39.   As per claim 29, Fogel in view of Thompson teaches the method of claim 28 as described above.

Fogel does not explicitly teach the method wherein enhancing the data comprises scrubbing the data to incorporate changes in the spelling of words comprising the gathered data as compared to the data descriptive of details of a long term care transaction.

However, Thompson further teaches the method wherein enhancing the data comprises scrubbing the data to incorporate changes in the spelling of words comprising the gathered data as compared to the data descriptive of details of a long term care transaction (figure 3, spell check and correcting and paragraphs 471 – 480).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add this feature to Fogel. One of ordinary skill in the art at the time of the invention would have added this feature

- With the motivation to provide a computer-aided error correction application (Thompson, paragraph 14).

- The elements are all known but not combined as claimed. The technical ability exists to combine the elements as claimed and the results of the combination are predictable. When combined, the elements perform the same function as they did separately.

40.   *Claim 31* is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogel et al., U.S. Patent Number 6,542,905 in view of Guyan et al., U.S. Pre-Grant Publication 2003/ 0145124.

41.   As per claim 31, Fogel teaches the method of claim 1 as described above.

Fogel does not explicitly teach further teaches the method wherein structuring the gathered data

and the data relating details of the long term care transaction according to risk quotient criteria

comprises processes based upon <u>Boolean logic</u>.

However, Guyan further teaches the method wherein structuring the gathered data and the data

relating details of the long term care transaction according to risk quotient criteria comprises

processes based upon Boolean logic (paragraphs 176, 177 with example; paragraphs 189 - 192

with example; paragraphs 227 - 230 with example).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add

this feature to Fogel. One of ordinary skill in the art at the time of the invention would have

added this feature

- With the motivation to store, retrieve and manipulate data using a plurality of functions
  (Guyan, Abstract).

- The elements are all known but not combined as claimed. The technical ability exists to
  combine the elements as claimed and the results of the combination are predictable.
  When combined, the elements <u>perform the same function as they did separately</u>.

Response to Arguments

42.   Applicant's arguments, see claim objections, filed 7/28/2009, with respect to claims

1(correctly understood to be claim 3), 14, 17, 27 and 34 have been fully considered and are

persuasive. The objections of claims 1(correctly understood to be claim 3), 14, 17, 27 and 34

have been withdrawn.

43.   Applicant's arguments, see 35 U.S.C. 112, 2nd paragraph rejection, filed 7/28/2009, with

respect to claim 17 have been fully considered and are persuasive. The 35 U.S.C. 112, 2nd

paragraph rejection of claim 17 has been withdrawn.

44.   Applicant's arguments filed 7/28/2009 have been fully considered but they are not

persuasive.

- Claim Rejections – 35 U.S.C. 101

    o The Examiner has maintained the rejection as nothing was amended. Additional

        description of the Examiner considers the essential steps are detailed above. The

        Examiner notes that this rejections is easily overcome by adding language into the

        claims such as, "calculating, by the computer system,."

- Claim Rejections – 35 U.S.C. 102

    o The Applicant states, "Applicant has amended independent claim 1 to provide

        clarification, correct typographical inaccuracies and/ or informalities, and/ or to

        better track practical/ commercial implementation/ practices."

        ▪ Claim 1 was not amended although the Applicant's intent is clear.

    o The Applicant states, "… but does not discuss 'structuring the gathered data and

        the data relating details of the long term care transaction according to risk

        quotient criteria' As recited by independent claim 1."

        ▪ The Examiner has interpreted the claim language according to the

            specification. Except for Page 19, lines 1 – 4, the Applicant's specification

            mentions data structuring with regard to the multiple ways data can be

            stored. Not having any further guidance, and reading broadly in light of

the specification, the data structuring step is the gathering of relevant data into a database. The Examiner has added additional references to help with the rejection.

o The Applicant further states, "Fogel's data integrity analysis/ scoring does not, however, discuss, or render obvious the claimed 'calculating a risk quotient...' or 'generating a report comprising the risk quotient and at least some of the structured data referenced to calculate the risk quotient' as recited by independent claim 1."

▪ The Examiner notes that there is no definition of "risk quotient" found within the specification. Page 5, lines 24 and 25 describes a risk quotient as "Risk Quotient: Risk Quotient refers to a quantitative value of an amount of Risk, a Risk Quotient *can be* based upon a weighted algorithm applied to the Risk criteria and informational artifacts." (emphasis added) The can be phrase implies other potential risk quotient values are applicable.

• The Examiner is not suggesting that the Applicant amend the claims to better define the "risk quotient." It is the Examiner's position that "a weighted algorithm" (not claimed) is old and well known and would be a simple replacement of one scoring mechanism for another. The Applicant has chosen not to include his particular algorithm.

- ▪ The data found within a report is considered non-functional descriptive information.
- Claim Rejections – 35 U.S.C. 103
  - o The Applicant's arguments are general allegations of patentability and are therefore not persuasive for the reasons described above.

The Examiner has carefully reviewed the Applicant's specification. The Examiner notes the broad nature of the language found within the specification and the absence of specific or potentially limiting examples. The Examiner suggests that the Applicant consider all options before proceeding.

Conclusion

45.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEAL R. SEREBOFF whose telephone number is (571)270-1373. The examiner can normally be reached on Mon thru Thur from 7:30am to 5pm, with 1st Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. R. S./
Examiner, Art Unit 3626
11/9/2009

/C. Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626